

Application No. 10/590,611
Amendment dated April 2, 2010
After Final Office Action of February 3, 2010

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Docket No.: 66126(70301)

REMARKS

In the Office Action dated February 3, 2010, claims 18-26 and 28-35 are pending in this application, and claims 18-26 and 28-35 are rejected. Reconsideration is requested for at least the reasons discussed hereinbelow. The rejection is made final.

Applicant respectfully requests withdrawal of the finality of this rejection "in view of the new ground(s) of rejection."

The above amendment is submitted to more particularly point out and distinctly claim the subject matter regard as invention. Claims 18 and 29 have been combined.

Claims 18-20, 26, 31, 32, 34 and 35 are rejected under 35 U.S.C. §102(b) over Beasley (US 4768774). Beasley discloses an aquatic exercise device comprising handles in form of bar-type handgrips (see, col. 4, 1st para.; Figs. 1 and 2). To the contrary, the sports device according to claim 18 of the present application recites handles in form of hoops/loops. It is not seen how the handgrips of Beasley could "accommodate a hand or a foot," as recited in claim 18.

Regarding claim 31, Beasley discloses an aquatic exercise devise wherein handle members 14 are mounted to a columnar-shaped flexible body 20 by *rigid* shank-type members 32 having tubular handgrips 42 telescoped thereover (cf. col. 3, line 38; col. 4, 1st para.; Fig. 2). This assembly of handle members 14 implies rigidity and, indeed, rigidity is necessary in order to enable the aquatic exercises depicted in Figures 4 to 8.

To the contrary, present claim 31 recites, among other things, that the handles are formed of a stretchable element made of an elastically stretchable material, which is attached respectively to the elongated body. Hence, the invention of present claim 31 substantially differs from the disclosure of Beasley.

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Regarding present claims 34 and 35, it is strongly contested that Beasley discloses assemblies as defined in the aforementioned claims for at least the following reasons. Present claims 34 and 35 define an assembly comprising a sports device according to claim 18 or 31, respectively, and at least one standing holder, into which the elongated body is inserted.

First, Beasley does not disclose a sports device of either claim 18 or claim 31 (see above).

Second, Beasley does not disclose the presently claimed assembly. Rather, Figure 2 cited by the Examiner depicts an enlarged longitudinal vertical sectional view of the handle members, the fluid resistance members and a fragmentary portion of an end section of the aquatic exercise device (cf. col. 3, l. 3-6 and col. 4, 1st para.), that is, Figure 2 is merely integral components of the aquatic exercise device of Beasley. Figure 2 *is not* an assembly wherein a sports device is inserted in at least a standing holder.

The remaining dependent claims are patentable for at least the reasons discussed above.

Thus, it is not seen that the presently claimed inventions are anticipated by Beasley. Nor is it seen that the presently claimed inventions would have been obvious to one of ordinary skill in the art in view of Beasley.

Claims 18, 22-24, 26, 32 and 33 are rejected under 35 U.S.C. §102(e) over Deal (US 7291101). Deal discloses an exerciser and massager apparatus respectively comprising handles in form of handgrips (see, col. 2, lines 18-21; Figs. 2 and 4). To the contrary, the present invention discloses and claims handles in form of hoops and/or loops, as recited in claim 18. Furthermore, Deal's handles in form of bar handgrips are not configured to accommodate a hand or a foot, as recited in present claim 18.

With respect to Applicant's arguments in the previous Amendment (October 7, 2009) that the borings are used to bend and hold the shaft instead of being used to attach the handles, the

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Examiner states that a recitation of intended use must result in a structural difference between the claimed invention and the prior art. Applicant respectfully submits that such a structural difference is very apparent and can easily be seen because the borings in the present invention are used to attach the handles whereas no handles are attached using the borings of Deal. Nor does Deal suggest that handles be attached using the borings.

The remaining dependent claims are patentable for at least the reasons discussed above.

Thus, it is not seen that the presently claimed inventions are anticipated by Deal. Nor is it seen that the presently claimed inventions would have been obvious to one of ordinary skill in the art in view of Deal.

Claims 19-21 are rejected under 35 U.S.C. §103(a) over Deal in view of Casagrande et al. (US 4861300; "Casagrande"). Deal is discussed in detail above. Casagrande *fails* to make up for the deficiencies of Deal. Casagrande also fails to teach or suggest, for example, handles in form of hoops and/or loops configured to accommodate a hand or a foot, as recited in present claim 18 from which claims 19-21 depend.

Thus, it is not seen that the presently claimed inventions would have been obvious to one of ordinary skill in the art in view of any combination of Deal and Casagrande.

Claim 25 is rejected under 35 U.S.C. §103(a) over Deal in view of Laden (US 5697792). Deal is discussed in detail above. Laden *fails* to make up for the deficiencies of Deal. Laden also fails to teach or suggest, for example, handles in form of hoops and/or loops configured to accommodate a hand or a foot, as recited in present claim 18 from which claim 25 depends.

Thus, it is not seen that the presently claimed inventions would have been obvious to one of ordinary skill in the art in view of any combination of Deal and Laden.

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Claim 28 is rejected under 35 U.S.C. §103(a) over Deal in view of Halsworth (US 6949035). Deal is discussed in detail above. Halsworth *fails* to make up for the deficiencies of Deal. Halsworth also fails to teach or suggest, for example, handles in form of hoops and/or loops configured to accommodate a hand or a foot, as recited in present claim 18 from which claim 28 depends. Instead, Halsworth discloses a "power swing training bat" wherein a shaft is held and swung by the user. It is respectfully submitted that one of ordinary skill in the art would not have any idea to combine the teachings of Deal with those of Halsworth.

Thus, it is not seen that the presently claimed inventions would have been obvious to one of ordinary skill in the art in view of any combination of Deal and Laden.

Claims 29 and 30 are rejected under 35 U.S.C. §103(a) over Deal in view of MacMillan (US 6949035). Deal is discussed in detail above. It is not seen how MacMillan makes up for the deficiencies of Deal. MacMillan also *fails* to teach or suggest a sports device having an elongated body wherein the body ends have borings through the body transverse to the longitudinal direction and handles are attached through the borings.

MacMillan describes an exercise system made with elastic cords that can be attached through fastening rings. It is not seen how the disclosure of MacMillan would have been combined with Deal by one of ordinary skill in the art. Would the combination provide ring fasteners along the elongate body of Deal?

Thus, it is not seen how the present invention would have been obvious to one of ordinary skill in the art in view of any combination of Deal and MacMillan.

Claims 34-35 are rejected under 35 U.S.C. §103(a) over Deal in view of Malynowsky (US 5399139). Deal is discussed in detail above. It is not seen how Malynowsky makes up for the deficiencies of Deal. Malynowsky also *fails* to teach or suggest a sports device having an elongated body wherein the body ends have borings through the body transverse to the longitudinal direction

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and handles are attached through the borings. Malynowsky describes a footrest with walking movement. It is not seen how the disclosure of Malynowsky would have been combined with Deal by one of ordinary skill in the art. How would one of ordinary skill in the art combine the footrest with the exercise and massage apparatus of Deal?

It must be noted that the sports devices of present claims 18 and 31, respectively, represent one part of the assembly defined in claims 34 and 35 and these sports devices are patentable for at least the reasons discussed in detail above.

Furthermore, Malynowski does not disclose a standing holder, since the T-shaped-support 12 is formed from a main shaft 14, wherein an arm or cross shaft 16 is mounted to the distal end 14B of the main shaft 14 (see, col. 4, ultimate para.; Fig. 1). That is, main shaft 14 and cross shaft 16 necessarily have to be integral components in order to provide a stable T-shaped-support 12 enabling a walking movement as depicted in Fig. 3. Thus, the person skilled in the art would not combine the teachings of Deal and Malynowski. Much less, would a combination of Deal and Malynowski lead to the assemblies according to present claims 34 and 35.

Thus, it is not seen how the present invention would have been obvious to one of ordinary skill in the art in view of any combination of Deal and Malynowsky.

Claim 31 is rejected under 35 U.S.C. §103(a) over Beasley in view of Perrin (US 3256015). Beasley is discussed in detail above. Perrin *fails* to make up for the deficiencies of Beasley. It should be noted that reference number 25 in the Figures of Perrin denotes no elastically stretchable handle but, instead, a resilient material in form of a latex rubber band (see, col. 2, line 27-47), wherein this latex rubber band provides for the necessary resistance when it is pulled or pushed (see, col. 4, lines 17-47; Figs. 12-16). As readily seen, the user typically grips a rigid bar. However, the user may also grip the end of the elastic band (Fig. 12). However, no handle is depicted. Much less, a handle formed of an elastically stretchable material, as recited in claim 31. Thus, Applicant strongly contests that the person of ordinary skill in art would have been led combine Beasley with

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Perrin. Further, even if he would have combined the aforementioned documents, it is respectfully submitted that he would not arrive at a sports device according to present claim 31.

Thus, it is not seen how the present invention would have been obvious to one of ordinary skill in the art in view of any combination of Beasley and Perrin.

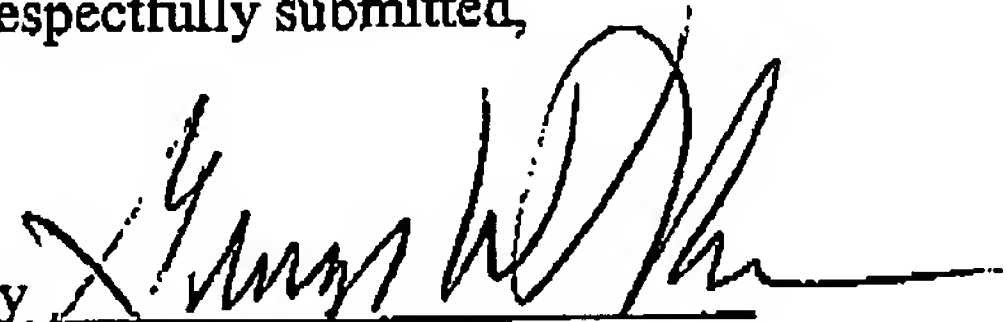
If for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, the Commissioner is hereby authorized and requested to charge Deposit Account No. 04-1105.

In view of the discussion above, Applicant respectfully submits that the pending application is in condition for allowance. an early reconsideration and notice of allowance are earnestly solicited.

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Respectfully submitted,

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